

Tentative Rulings for May 1, 2003
Departments 22, 70, 72, 73

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, Rule 321(c).)

03CECG00785 In re Beatrice Fabita (Dept. 22)

03CECG00805 In re Gilbert Csatro (Dept. 22)

03CECG00800 In re Sharolyn June Campbell (Dept. 22)

02CECG03217 Meacham v. Georgantus (Dept. 22)

01CECG03172 Monterey Chemical v. Industrial (Dept. 72)

02CECG02331 Herrera v. Catholic Charities (Dept. 72)

02CECG03182 Noriega v. Fresno Unified School District (Dept. 72)

**02CECG01761 Barrientos v. The Testate and Intestate Successors
of Rafael Ramirez (Dept. 72)**

**02CECG00832 San Joaquin Valley Unified Air Pollution Control
District v. Rancho El Dorado et al. (Dept. 72)**

02CECG00316 Seal v. Rocker, et al. (Dept. 73)

01CECG01764 Moore v. Moore (Dept. 73)

03CECG00793 In re Jana Ratanakone (Dept. 73)

03CECG00824 In re Jahi Davis (Dept. 73)

01CECG04213 Clark v. Lackey (Dept. 73)

02CECG00473 Campos v. City of Fresno (Dept. 73)

(Tentative Rulings begin at next page)

Tentative Ruling

Re: **In re Griggs**
Superior Court Case No. 02CECG01148

Hearing Date: May 1, 2003 **(Dept. 22)**

Motion: petition to compromise minor's claim

Tentative Ruling:

To deny without prejudice. Petitioner may file a verified amended petition that cures the defects listed below. Petitioner must obtain a new hearing date for the amended petition.

Explanation:

The petition fails to properly comply with California Rules of Court, rule 7.950. The petition is not verified by the petitioner.

Notice of the action has not been given under Welf. & Inst. Code §14124.73. See Item 16. The bill for \$364.58 from Valley Children's is stamped Medi-Cal. See Exh. C. An explanation must be provided. Item 16 directs the court to see Exhibit F, presumably for the explanation. There is no Exhibit F attached to the petition.

The petition still fails to identify the company providing the annuity. This information is needed before the court can determine the suitability of the proposed annuity.

The proposed order still fails to give the name or address of the bank where any blocked account is to be located.

Pursuant to California Rules of Court, rule 391, subd. a, and Code of Civil Procedure section 1019.5, no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling **DSB** **4-29-03**

Issued By: _____ **on** _____.
 (Judge's initials) (Date)

Tentative Ruling

Re: **St. Paul Fire & Marine Insurance v. Carrier Corporation**
Superior Court Case No. 03CECG00370

Hearing Date: May 1st, 2003 **(Dept. 22)**

Motion: Plaintiff St. Paul's Motion to Enforce the 60-Day Hold Rule Before a Motion for Summary Judgment or Summary Adjudication of Issues Can Be Filed Pursuant to CCP § 437c(a)

Tentative Ruling:

To deny the motion to enforce the 60-day hold rule. (CCP § 437c(a).)

Explanation:

In reality, this appears to be a motion to strike Carrier's motion for summary judgment, on the ground that it is not filed in conformity with CCP § 437c(a). CCP § 437c(a) states that "The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed **or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct.**" (Emphasis added.) Therefore, the court has discretion to permit a party to move for summary judgment prior to the expiration of the 60-day period.

In *Sadlier v. Superior Court (Schoenberg)* (1986) 184 Cal.App.3d 1050, the court found that the motion was not "made" until the time of the hearing on the motion, so it was not improper for the trial court to allow the motion to go forward despite the fact that plaintiff filed and served its motion less than 60 days after defendant appeared. (*Id.* at 1054.) The court also noted that CCP § 1005.5 did not dictate a different result, even though that section states that a motion is made at the time it is filed and served, because that section also states "this shall not deprive a party of a hearing of the motion to which he is otherwise entitled." Because the plaintiff in *Sadlier* would otherwise have been entitled to a hearing on the motion for summary judgment, CCP § 1005.5 could not be used to deprive plaintiff of its hearing.

There is good cause to allow the early filing here, because doing so will allow Carrier to have the motion in the present case and the motion in the related action heard at the same time, thereby furthering judicial economy and avoiding the possibility of conflicting rulings. Also, if the court denies leave to bring the motion early, and then consolidates the actions, Carrier will not have an opportunity to bring its motion for summary judgment in this action. Therefore, the court's tentative ruling is to deny the motion to enforce the 60-day hold rule.

Tentative Ruling **DSB** **4-28-03**

Issued By: _____ **on** _____.
 (Judge's Initials) (Date)

Tentative Ruling

Re: **Anderson v. McPike, et al.**
Superior Court Case No. 636984-7

Hearing Date: May 1, 2003 **(Dept. 73)**

Motion: Of Defendant Josephine Settle for Summary Judgment

Tentative Ruling:

To continue the hearing to June 5, 2003, at 3:30 p.m. in Dept. 73, to allow the Court additional time to review and consider the papers. This continuance will not affect the statutory deadlines under CCP § 437c for filing papers, and those deadlines will be based on the original hearing date of May 1, 2003. That is, any papers filed in support of or in opposition to the instant motion after the statutory deadlines calculated as of the May 1 hearing date will not be considered.

Pursuant to CRC 391(a) and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling **MWS** **4/30/03**
Issued By: _____ **on** _____.
 (Judge's Initials) (Date)

Tentative Ruling

Re: **Armenta v. FMC Corporation**
Superior Court Case No. 02CECG00326

Hearing Date: May 1st, 2003 (**Dept. 70**)

Motion: Defendants Gap, Inc. and James N. Gray Company's
Motion for Summary Judgment

Tentative Ruling:

This case in being continued to May 8th per courts request.

Tentative Ruling **HAC** **4/30/03**

Issued By: _____ **on** _____.
 (Judge's Initials) (Date)

Tentative Ruling

Re: **Vela v. Darbandi, et al.**
Superior Court Case No: 02CECG02069

Hearing date: May 1, 2003 **(Dept. 70)**

Motion: (1) Plaintiff's motion to compel further responses of
Auto Barn and Diana Darbandi to form interrogatories, set one, special interrogatories, set one, and requests
for production of documents, set one
(2) Plaintiff's motion to compel compliance with
stipulation

Tentative Ruling:

This case is being continued to May 6th per court's request.

Tentative Ruling	HAC	4/30/03
Issued By:	_____	on _____
	(Judge's initials)	(Date)

Tentative Ruling

Re: **Muna v. Severine**
Superior Court Case No: 627696

Hearing date: May 1, 2003 **(Dept. 70)**

Motion: To Compel

Tentative Ruling:

This case is being continued to May 15th per court's request.

Tentative Ruling	HAC	4/30/03
Issued By:	_____	_____
	(Judge's initials)	(Date)

Tentative Ruling

Re: **Henderson v. Baro, et al.**
Superior Court Case No: 02CECG02050

Hearing date: May 1, 2003 **(Dept. 70)**

Motion: Plaintiff's motion for reconsideration of order vacating defaults; defendants' demurrer to complaint

Tentative Ruling:

This case is being continued to May 8th per court's request.

Tentative Ruling **HAC** **4/30/03**
Issued By: _____ **on** _____.
 (Judge's initials) (Date)

Tentative Ruling

Re: **Long Construction, Inc. v. City of Fresno,**
Superior Court Case No. 03CECG00617

Hearing Date: May 1, 2003 **(Dept. 22)**

Motion: Defendant's Motion to Dismiss Complaint

Tentative Ruling:

To grant the motion by Defendant City of Fresno, treating the motion as one for judgment on the pleadings, without leave to amend. The Plaintiff's Complaint is time-barred under the applicable Labor Code provisions regarding the prevailing wage law.

Explanation:

It appears that the statutory remedy which permitted the awarding party to file a "motion to dismiss" no longer exists. I.e., Section 1733 [the prior "dismissal" statute] was repealed when the prevailing wage statutes were amended on July 1, 2001. Nevertheless, the court may treat the motion as one for judgment on the pleadings under CCP 438, as the defects are apparent from the face of the complaint and matters that may be judicially noticed.

The Plaintiff's complaint, however it is styled, is clearly an action to recover the funds which the City of Fresno withheld pursuant to the DSLE's notice to withhold the sum of \$105,792.07 under prevailing wage law. (See, Complaint, par. 9-11; Declar. of Yuen-Garcia, Exh. B). That being the case, the Plaintiff's exclusive remedy was to bring suit against the awarding body (i.e., City of Fresno) to recover the withheld funds pursuant to the provisions of the Labor Code. (Labor Code 1732). The suit to recover the sums withheld under the prevailing wage law had to be filed by the contractor within 90-days after completion of the contract and the formal acceptance of the job. (Labor Code 1730-1733). If suit was not filed within the 90-day period, the contractor's right to recover such sums was forfeited, and the awarding body was then under a mandatory duty to transfer the funds to State. (Labor Code 1730). If the contractor failed to bring such action within the 90-day period, "the action shall be dismissed on motion of the awarding body." (Labor Code 1733).

Here, the contract was completed and accepted by the City of Fresno on March 20, 2001. (Declar. of Yuen-Garcia, Exh. A). Thus, the 90-day period expired on June 19, 2001. The present action was

commenced by Plaintiff on February 24, 2003. Therefore, it appears that Plaintiff's Complaint was time-barred under the applicable Labor Code provisions.

To the extent that the parties settlement agreement required the City of Fresno to withhold the sums until a court order is issued to resolve the prevailing wage dispute (see, Settlement Agreement, par. 6(e), at Declar. of Smith, Exh. 'A'), such a provision implies that the contractor will take any necessary steps to obtain such a court order, and the only recognized means of doing so under applicable law was to file suit under the above Labor Code provisions within the 90-day period. Moreover, to the extent the provision might be construed as an attempt to bypass or circumvent the mandate of the applicable Labor Code provisions in regard to the prevailing wage law, such provision would be deemed void as contrary to public policy. (*Civil Code* 1667; see, *Farmers Insur. v. Hurley* (1999) 76 Cal.App.4th 797, 802). The overall purpose of the prevailing wage law is to protect and benefit employees on public works projects. (*Lusardi Construction v. Aubry* (1992) 1 Cal.4th 976, 985). The prevailing wage law is applied regardless of whether the contract's provisions expressly require such compliance. (*Id.*, p. 987-988). Further, prompt payment of wages is recognized as a public policy of this state. (See, *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1147). Here, the 90-day statutory period appears to have been for the public policy of ensuring prompt payment of wages, and the parties would not be entitled to contract around this statutory mandate that was then applicable.

On July 1, 2001, about 11-days *after* the 90-day period expired in this case, new legislation took effect which repealed the requirement that an action be filed in 90-days with the court, and in its place established procedures for a prompt administrative action. (See, e.g., *Labor Code* 1727 and 1741). Under the new statutory scheme, the awarding body holds the funds concerning which a prevailing wage 'assessment' has been made (by the Labor Commissioner) until there has been a final order that is no longer subject to judicial review. (*Id.*). Are such provisions retroactive to the matters alleged in the Plaintiff's complaint? The answer is 'no'. "A basic canon of statutory interpretation is that statutes do not operate retrospectively unless the Legislature plainly intended them to do so." (*Western Security Bank v. Sup.Ct.* (1997) 15 Cal.4th 232, 243). There is no indication in the above statute that it was intended to be retroactive. The amendment therefore does not operate to revive an already time-barred claim under the prior statute. (See, e.g., *Gallo v. Sup.Ct.* (1988) 200 Cal.App.3d 1375, 1378-1380 [general rule of interpretation is that changes in periods of limitations do not apply retroactively to revive claims that are already time-barred]). Accordingly, the motion will be granted.

Tentative Ruling **DSB** **4-30-03**

Issued By: _____ **on** _____ .

(Judge's initials) (Date)

Tentative Ruling

Re: **Reid v. Fresno Unified School District**
Superior Court Case No. 02CECG01392

Hearing Date: May 1, 2003 (**Dept. 72**)

Motion: Defendants' Motion for Judgment on the Pleadings.

Tentative Ruling:

To deny as untimely filed under CCP 438 (e).

Explanation:

Absent leave of court, a motion for judgment on the pleadings must be brought either before entry of the pretrial conference order or 30 days before the initial trial date, whichever is later. (CCP 438 (e).) In this case, the Case Management Conference Order was issued on Sept. 30, 2002. The initial trial date was April 1, 2003, and the 30th day before the initial trial date was Mar. 3, 2003. Defendants filed their motion on Mar. 20, 2003, some 17 days late.

Pursuant to CRC 391 (a) and CCP 1019.5 (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling **S J KANE** **4/30/03**
Issued By: _____ **on** _____.
 (Judge's initials) (Date)